

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

No. CR 99-0013-01 JC

JOSEPH LUJAN,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for consideration of Defendant's Motion to Dismiss – Speedy Trial, filed April 16, 1999 (*Doc. 50*). The Court has reviewed the motion, the response, and the relevant authorities. The Court finds that the motion is not well taken and will be denied.

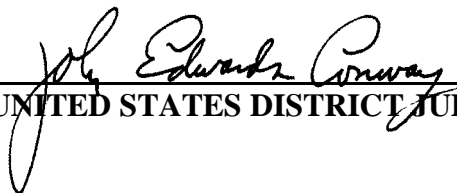
Defendant Lujan is joined for trial with four other co-defendants. Those defendants filed motions that were under consideration between February 19, 1999 and February 25, 1999 and between March 8, 1999 and April 5, 1999. The time periods for consideration of those pretrial motions is excludable against the Speedy Trial Act time of the defendants who authored the motions. *See* 18 U.S.C. § 3161(h)(1)(F). The dispositive issue before me is whether the excludable delay of Defendant Lujan's co-defendants should be excluded as to Defendant Lujan's Speedy Trial Act time as well. Under 18 U.S.C. § 3161(h)(7), a "reasonable period of delay" may be excluded "when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted."

I find that it is reasonable to apply the excludable delay to Defendant Lujan as well. Several factors lead me to this conclusion. The additional period of delay involved is relatively short. Defendant Lujan took no action to demand a speedy trial or to raise the issue as to whether his co-defendants' excludable delay applied to him until he filed this motion on April 16, 1999. Defendant Lujan took no action to sever his co-defendants. I have considered the fact that Defendant Lujan has been in custody awaiting trial as a factor weighing against excluding the delay caused by his co-defendants' motions. Balancing all the factors, I conclude that it is reasonable to exclude the delay caused by the co-defendants' motions against Lujan's Speedy Trial Act time.

Wherefore,

IT IS ORDERED that Defendant's Motion to Dismiss – Speedy Trial, filed April 16, 1999 (*Doc. 50*) is **denied**.

DATED this 26th day of May, 1999.



CHIEF UNITED STATES DISTRICT JUDGE

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